IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.2110 OF 2006

Sanjay Ashok Rajput ...Appellant

vs.

Union of India ...Respondent

Mr.G.J.Mohanrao for the Appellant
Mr.Anand Samant for the Respondent.

CORAM: A.S.OKA,J.
DATE : FEBRUARY 22,2007.

ORAL JUDGMENT:

1. I have heard the submissions of the learned Counsel for the parties. The Appeal arises out of an order passed by the Railway Claims Tribunal on an Application for condonation of delay filed by the Appellant. The case of the Appellant is that on 20th December 1995 he was travelling from Dadar to Sion by a local train. He accidentally fell down from the train near Dadar Railway Station. He was admitted to K.E.M. Hospital, Mumbai. According to him, his left leg was to be amputed and he has lost his fingers of his right hand.

2. The Claim Application was filed on 16th April 2002 along with an Application for condonation of delay. The delay was of about 7 years and three months. By the impugned order, the learned Members of the tribunal have declined to condone the delay on the ground that sufficient cause for condonation of delay was not made out. The learned Members of the tribunal observed that on his own showing the Appellant had come to

Mumbai in December 1998 for medical treatment. The Tribunal referred to paragraph 5 of the Claim Application and observed that the Appellant had stated that he was working as a the Restaurant Kitchen Supervisor in a restaurant in Mumbai.

3. The learned Advocate for the Appellant submitted that there is hardly any dispute about the factum of the accident. He submitted that the Appellant sustained serious injuries and he has given reasons for condonation of delay. He submitted that a liberal approach was contemplated while dealing with the application for condonation of delay.

4. The learned Advocate for the Respondent submitted that there was a gross delay of seven years and more which is not at all explained by the Appellant. He submitted that no indulgence can be shown considering the length of delay.

5. The Apex Court has held that the length of delay is not at all relevant and what is relevant is whether there is sufficient cause for condonation of delay. The court has to also examine whether the delay is deliberate or whether there is negligence on the part of the Applicant. There is prima facie material on record to show that as a result of fall from the train, the Appellant suffered serious injuries. As a result of injuries, there was an amputation of his left leg below the knee and amputation of fingers of right hand. The

Tribunal is impressed by what is set out in paragraph 5 of the Claim Application. In paragraph 5 of the Application, the appellant has stated thus :

"5.Name and address of the employer of the injured, if any. Restaurant Kichan Superviser

The Appellant has nowhere stated that he is working in Mumbai. However, that is the finding recorded by the Tribunal on the basis of paragraph 5 of the Claim Application.

6. I have perused the averments made by the Appellant in the Application for condonation of delay. He has stated that after he suffered amputation, he had to undergo a long treatment. He was thereafter taken to his home town at Rajasthan and thereafter he had to take the treatment for a long term. He was mentally disturbed due to accidental injuries. He has stated that he came to Bombay in December 1998 and underwent medical treatment. He relied upon the medical certificate issued to him on 5th January 2002. According to the Appellant, he was unable to do any work. He stated that he was not aware of the period of limitation. Reply filed by the Respondent to the said Application is naturally of the denial. I have perused the certificate dated 5th January 2002 which is annexed to the Application which certifies permanent partial disability of 75%. Considering

the nature of injuries suffered by the Appellant and considering the material on record which shows that the Appellant had to undergo the treatment for a long time, the tribunal ought to have taken a liberal view of the matter. There is no negligence on the part of the Appellant. It cannot be forgotten that the Tribunal was dealing with a case of an Applicant who had to undergo the amputation of leg as a result of the accident. In a matter like this, a liberal and justice oriented approach was certainly contemplated. In my view, the delay ought to have been condoned in this case.

7. Hence, the impugned order deserves to be quashed and set aside. It is, however, made clear that the claim application made by the Appellant will have to be considered on its own merits without being influenced by the observations made in this order which are for limited purpose of considering the Application for condonation of delay.

8. Hence, I pass the following order :

i) Impugned order dated 23rd June 2004 is quashed and set aside.

ii) Miscellaneous Application No.25 of 2002 is allowed.

iii) The Tribunal will proceed with the Claim Application.

iv) Appeal is allowed in above terms.

JUDGE